

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM J. McGRATH

Appeal No. 2000-1613
Application No. 09/178,053

ON BRIEF

Before CALVERT, ABRAMS, and JENNIFER D. BAHR, Administrative
Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to 4 and 8, all the claims remaining in the application.

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The claims on appeal are drawn to a fastening and supporting device adapted to be clamped to a vertically placed hanger, and are reproduced in the appendix of appellant's brief.

The references applied in the final rejection are:

Klingel 1925	1,546,839	Jul. 21,
Roth 1993	5,188,317	Feb. 23,

Claims 1 to 4 and 8 stand finally rejected under 35 U.S.C.

§ 103(a) as unpatentable over Klingel in view of Roth.¹

Initially, we note that on page 3 of the brief² appellant states that one issue is "whether the amendment of the application submitted on September 14, 1999 was properly rejected [sic: denied entry]." However, that issue is not

¹ An additional rejection of claims 1 to 4 and 8 under 35 U.S.C. § 112, second paragraph, has been withdrawn (examiner's answer, page 3).

² Any references herein to appellant's brief are to the brief filed on January 3, 2000.

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within the jurisdiction of this Board, being reviewable by
petition under

37 CFR § 1.181. In re Mindick, 371 F.2d 892, 894, 152 USPQ
566, 568 (CCPA 1967).

The basis of the rejection is stated in detail on pages 3
and 4 of the final rejection (Paper No. 4), and need not be
repeated here. In essence, the examiner's position is that
(id., page 3):

It would have been obvious to a person of
ordinary skill in the art the time the invention
was made to have attached a mounting angle 24
[of Roth] to the clamp main body portion 10 [of
Klingel] because one would have been motivated,
in view of Roth, to have provided a means for
supporting a bracket horizontally to support
pipes or cables.

We will not sustain this rejection. The clamp disclosed
by Klingel is for the purpose of connecting a (ground) wire 20
to a rod 19. While Roth does disclose apparatus 24, 30
attached to a rod 14, the purpose of Roth's device is to
connect a strut 26 to a rod 14 of a suspended (hanging
support) system 12 in order to prevent oscillation of the
system by bracing the pipe hanger 18 supported at the end of

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the rod (col 2, lines 50 to 61; col 4, line 66, to col. 5, line 23). Since the rod 19 to which the Klingel clamp is attached is not disclosed as being subject to oscillation and/or as suspension for a pipe, conduit, or other structure, it is not apparent why one of ordinary skill would have found it obvious from Roth's disclosure to brace the Klingel rod 19 by providing the Klingel clamp with a means (such as Roth's angle portion 36) for attaching a strut thereto. Any such modification of Klingel would be based on impermissible hindsight gleaned from appellant's own disclosure, rather than from the teachings of the prior art.

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Conclusion

The examiner's decision to reject claims 1 to 4 and 8 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JENNIFER D. BAHR)	
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REVERSED

Prepared: August 24, 2001